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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 166

GULF, MOBILE AND OHIO RAILROAD COMPANY,
Petitioner,

vs.

PEOPLE ex rel. JAMES T. CALLAHAN, County Collector of Madison County, Illinois,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of Illinois.

J. N. OGDEN,
104 St. Francis Street,
Mobile, Alabama,
LOUIS F. GILLESPIE,
HUGH J. DOBBS,
508 Reisch Building,
Springfield, Illinois,
Attorneys for Petitioner.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 1-4477.

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of Madison County, Illinois,
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PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of Illinois.

The petitioner, Gulf, Mobile and Ohio Railroad Company, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois, entered in the above entitled cause on January 19, 1956.

REFERENCE TO REPORTS OF OPINION BELOW.

The opinion of the Supreme Court of Illinois is reported at 8 Ill. 2nd 60, 132 N. E. 2nd 544 (Advance Sheet No. 4). No opinion was rendered in the trial court.

JURISDICTION.

The opinion of the Illinois Supreme Court was filed on January 19, 1956 (R., 9).[1] Judgment of the Court was entered as of January 19, 1956 (R., 15). A timely petition for rehearing was denied on March 19, 1956 (R., 23).[2] The motion of the Railroad that the State Supreme Court consider the exercise of its power *ex mero motu* to order an amendment of the pleading was denied on March 15, 1956 (R., 22).

This court has jurisdiction of this cause under 28 U. S. C., Sections 1257 (3) and 2101 (c).

QUESTIONS PRESENTED.

The questions presented for review are:

1) Did the stricken tax objections of the Railroad adequately present the defense of denial of due process of law and of the equal protection of the laws, under the Fourteenth Amendment to Federal Constitution?

2) Was the Railroad deprived of due process of law and of the equal protection of the laws by the capricious application of a standard of pleading in this case, not provided by the statute establishing the remedy, and not applied in other tax objection cases, the practical effect of which was to by-pass these asserted federal rights and to deny to the Railroad its only efficient remedy for the enforcement of such rights?

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[1] Matters appearing only in the transcript of record in this court are indicated by "R., ...". Those matters appearing in the printed abstract of record before the Illinois Supreme Court are indicated by "Abst., ...".

[2] The dissenting opinion of the Chief Justice which appears in the transcript immediately following the majority opinion, was in fact filed on March 19, 1956, the day the petition for rehearing was denied. The judgment of the court was entered as of the date of the majority opinion on March 23, 1956, upon the adjournment of the March term of the court.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED.

The Constitutional provisions and statutes and rules which this case involves are:

(1) The "due process" and "equal protection" clauses of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

(2) The provisions of the 1939 Revenue Act, as amended and in effect in the year 1951, which required locally assessed property to be assessed by local assessing officers, to be reviewed and corrected by the County Board of Review, and to be equalized by application of a multiplier determined by the State Revenue Department at **full fair cash value.**[3] Sections 17, 20, 21 and 73 through 77, 94, 100, 107, 108 (5), 111, 127, 128, 129, 130, 131, 146, 149 and 151 of the 1939 Revenue Act of Illinois, as amended. 1951 Illinois Revised Statutes, Ch. 120, pars. 498, 501, 502, 554-558, 575, 581, 588, 589 (5), 592, 608, 609, 610, 611, 627, 630-632.[4]

(3) The provisions of said 1939 Revenue Act requiring railroad property to be assessed and equalized by the State Department of Revenue at full fair cash value and to be

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[3] It was conceded by the Collector, and found by the Supreme Court of Illinois, that the sections of the Revenue Act referred to required all valuations of property subject to *ad valorem* taxation to be developed and extended at full, fair cash value. The court said in its opinion, "the parties agree, as indeed they must, that the Revenue Act requires all valuations upon which tax rates are developed and extended to be at full, fair cash value." Separate Appendix A.

[4] All references to the Illinois Statutes refer to the State Bar Association and the Smith-Hurd Annotated editions of the Illinois Constitution and Statutes. Chapters and sectional arrangements are the same. The State Bar Association volumes are published biennially and the 1951 edition is used for referral purposes because 1951 taxes are here involved. However, with minor exceptions the subsequent editions of the State Bar Statutes would contain the applicable statutory provisions.

locally taxed as "other real estate."[5] Sections 17, 80, 85, 86, 88, 90, 130 and 131 of the 1939 Revenue Act; 1951 Illinois Revised Statutes, Ch. 120, pars. 498, 561, 566, 567, 569, 571, 611 and 612.

(4) The provisions of said 1939 Revenue Act defining the remedy of tax objection in the County Court upon the application of the Collector for judgment for taxes paid under protest, and requiring the court to hear and determine the matter in a **summary** manner, **without pleadings**, and to pronounce judgment as the right of the case might be, and which authorized amendments to a tax objection as in other cases. Sections 194, 232, 234 and 235 of the 1939 Revenue Act; 1951 Illinois Revised Statutes, Ch. 120, pars. 675, 713, 715 and 716.

(5) The provisions of the Civil Practice Act and the Illinois Statute of Amendments and Jeofails authorizing amendments to any pleading in any court prior to final judgment. Sections 46 and 92 of the Illinois Civil Practice Act and Sections 1, 6 and 7 of the Statutes on Amendments and Jeofails; 1951 Illinois Revised Statutes, Ch. 110, pars. 170 and 216, Ch. 7, pars. 1, 6 (5), (9) and 7.

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[5] Sections 86, 146, 149 and 151 of the Act, as amended in the year 1945, and then added Section 162a were known as the *Full Valuation Acts* and constituted comprehensive basic tax reform legislation intended to accomplish full fair cash valuation for all taxable property in Illinois, as assessed or equalized for purposes of *ad valorem* taxation. 162a placed a floor under, and a ceiling over, local tax levies which might otherwise have been rendered insufficient or exorbitant as a result of the full valuation reform and the reduced tax rates which were simultaneously placed in effect by ninety other companion acts. It was shown in the Illinois Supreme Court (Appendix to Appellant's brief in that Court; R., 5); that it was publicly acknowledged that the reform was not effective in respect to locally assessed property, being ignored and knowingly violated at the local level where the assessment function was performed, and initial debasement occurred, and being intentionally and flagrantly violated at the state level in the determination of the multiplier to be applied to the debased local assessments to produce equalized full fair cash value.

(6) The Rule 39 of the Illinois Supreme Court applicable to all appealed cases, limiting matters to be considered to those presented by the record in the lower court and briefed and argued in that court. Rule 39 of Illinois Supreme Court Rules, effective in 1955; 1953 Illinois Revised Statutes, Ch. 110, par. 259.39, and Amended Rule 39, effective on and after January 1, 1956; 1955 Illinois Revised Statutes, par. 101.39.

STATEMENT OF THE CASE.

This is a tax objection proceeding which originated in the County Court of Madison County, Illinois, upon the Railroad's objections to the application of the County Collector for judgment for 1951 taxes paid by the Railroad under protest.

The Collector interposed a motion to strike the Railroad's objections. The motion was sustained and judgment awarded the Collector for the full amount involved—$18,578.38. An appeal was taken to the Illinois Supreme Court, which affirmed the County Court upon grounds not previously raised or considered.

Questions as to a denial of due process of law and of the equal protection of the laws evolved from the alleged unlawful discrimination against the Railroad in the *ad valorem* taxation of its property and the action of the Illinois courts in refusing to consider the merits of such objections.

The Railroad claimed by its stricken objections that it had been excessively, fraudulently and illegally taxed in Madison County for the year 1951 because of the intentional under-valuation of all locally assessed property in Madison County in wilful disregard and flagrant violation of the 1939 Revenue Act, as amended, at not exceeding 60 percent of the full, fair cash value of such property and

the assessment at full, fair cash value, or 100 percent assessment, of the Railroad's property.

The Railroad seeks to recover the amount of excess tax extended against its property as the inevitable result of rates developed through the use of assessments of locally assessed property admittedly assessed at not more than 60 percent of its full, fair cash value, together with assessments of property as made by the Department of Revenue, which assessments were admittedly at 100 percent of full, fair cash value.

With exceptions not here relevant, tax rates in Illinois are developed by the simple process of dividing the total assessed value of the particular taxing unit into the total amount sought to be levied by that unit. The resulting quotient is the rate. Expressed as a formula it is:

$$\frac{\text{Levy}}{\text{Assessed Value}} = \text{Rate}$$

It follows from the use of this formula that the rate increases or diminishes directly as the assessed value is lowered or raised. That is, the smaller the assessed value the higher the rate and the larger the assessed value the lower the rate.

Since the assessed value against which the 1951 taxes in Madison County were extended consisted of local assessments at not more than 60 percent of full, fair cash value on the one hand and assessed values fixed by the Department of Revenue at 100 percent of full, fair cash value on the other, it follows that the divisor in the formula (total assessed value) was lower than it should have been and the quotient (rate) higher than it should have been.

The Railroad contends that by being forced to pay taxes on rates higher than would have been developed if assessed

values of locally assessed property in the divisor for each taxing district had been at the equivalent of 100 percent of full, fair cash value, it is denied the equal protection of the laws; and, that the failure of the Illinois courts to allow the Railroad to pursue the statutory remedy for the recovery of such excess taxes, denies to it due process of law.

The objections of the Railroad were in two forms. By its Objection No. 1, the Railroad stated its case in respect to all the taxes claimed to be excessive because of such discrimination, and in this objection and a comprehensive and detailed table identified as "Schedule A", affirmatively and directly alleged all the controlling and material facts of the valuations, levies and rates and computed the amounts of excess taxes resulting from the alleged and demonstrated inequality and discrimination in the assessment and valuation of property. Other "specific objections" related to each of the several taxes objected to and independently, affirmatively and fully alleged the controlling and material facts in respect to each subject tax (Abst., 3-22, 28-40). The objections were amended to meet all points relating to their form raised by the motion, so that they might be considered solely upon their merits (Abst., 28-40).

The controlling facts alleged in the amended objections were admitted by the motion and may be briefly stated. The excessive taxation of the Railroad's property objected to is alleged to have resulted from the knowing and intentional violation of the said 1939 Revenue Act, as amended and in effect in 1951, by: (a) the local assessing officers of Madison County; (b) the Board of Review of said County; and (c) the State Department of Revenue, who are alleged to have, knowingly and intentionally, separately and collectively, violated the law and *knowingly and intentionally* produced assessed valuations of locally assessed property of not to exceed 60 percent of the

required statutory standard of full, fair cash value, at which such property was included in the tax base and taxed, while the law was obeyed as to the property of the Railroad, which was assessed and taxed at full, fair cash value.[6] It is shown by computations based upon such admitted facts, that as a result of the discriminatory assessment of locally assessed property, excessive and discriminatory taxes were levied upon the property of the Railroad in Madison County in 1951, in the total sum of $18,578.38 (Abst., 3-22, 38-40).

The admitted facts are a recital of the notorious practice of debasement of locally assessed valuations in Illinois,

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[6] The objection alleged that the assessors knowingly assessed such locally assessed property upon the valuation of not to exceed 10.2 percent of its full fair cash value, and that such valuations were certified by the County Board of Review without changing or revising the general level of the assessments with knowledge that the same was assessed at such debased value (Par. 3 of the objections; Abst. 3). It is further alleged that the Department of Revenue certified a multiplier which was knowingly and intentionally fixed by the Department at a percent which would produce a debased equalized and assessed valuation of not to exceed 60 percent of the full fair cash value of such property (Par. 4 of the objections; Abst. 4). It is also alleged that the 1951 taxes upon railroad property was levied upon a basis which discriminated against such property and the railroad in favor of "locally assessed property taxable in said county and districts, and the owners thereof, in that such locally assessed property was not valued at its full, fair cash value in either its assessment by the assessing officers of said district and county, or as equalized by application of the equalization rate certified by the Department of Revenue, but was *knowingly and intentionally* valued, assessed and equalized at a lesser value, to-wit: not exceeding 60% of its fair cash value, and lacked uniformity and was unequal in respect to the property of this Objector; and that the taxes levied by said county and the said several taxing districts when extended against all the property locally assessed and other property taxed in said county and taxing districts, including the property of this Objector, which was assessed *and equalized by the said Department at the State level at the full fair cash value thereof*, as provided by, under and in accordance with Sections 79 to 86, inclusive, and Section 88 of the 1939 Revenue Act, as amended, produced discriminatory, arbitrary, fraudulent, excessive, unconstitutional, wrongful and illegal rates of taxation upon Objector's property;" (Par. 9 of the objections; Abst. 7, also see Abst. 10-21, 9, 32-33).

through a consistent, concerted pattern of action on the part of the assessing and equalizing authorities charged with the duty of administering the Illinois Revenue Act, at all levels of government, designed to produce debased assessments without regard to the full valuation requirements of the Illinois Revenue Act of 1939, as amended. Such maladministration produced in Madison County for the year in question a debased valuation of locally assessed property, intentionally arrived at, which resulted in the alleged gross discriminatory taxation upon the Railroad and its property.[6a]

FEDERAL QUESTIONS PRESENTED IN THE COUNTY COURT.

It was contended by the Railroad in each objection that, by reason of the alleged discrimination, it had been excessively and illegally and fraudulently taxed in the demonstrated excessive amounts, in violation, *inter alia*, of the applicable provisions of "the 1939 Revenue Act, * * * and the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States" (Abst., 10, 13, 18).

FEDERAL QUESTIONS IN ILLINOIS SUPREME COURT ON APPEAL, AND DISPOSITION.

Upon appeal, in the Supreme Court of Illinois, the Railroad relied upon all grounds of objection asserted in the County Court, and also contended that, by the striking of its objections, the lower court had refused it the only efficient remedy provided by law against the alleged and admitted unequal and discriminatory taxation of its property and in so doing had denied it due process of law

[6a] Separate Appendix E, pages 35-41, and see Appellant's brief, pages 27-28, R. 5, and Appendix to Appellant's brief, pages 56-69.

and equal protection of the laws (Brief of Appellant, errors relied upon, pages 10-11, points and authorities and argument, I, II, III, and V, pages 12-17, 18-28, 42-48; R., 5).

The majority opinion of the Illinois Supreme Court held that, notwithstanding it appeared the Railroad was entitled to relief upon the defense of constructive fraud, and had chosen an appropriate remedy to assert such defense, and without referring to the statute defining the remedy or to any other precedent, the objections, as amended, were properly stricken because the "bare allegations" of the value of locally assessed property contained therein were insufficient to

> "Afford a basis for accepting the allegation that local property was assessed at other than its full, fair cash value or which would permit the court to make the comparison in values, the appellant seeks to draw, upon the defense of constructive fraud."

The question before the court in considering the propriety and justice of the order of the trial court striking the objections, was not the acceptance of the truth of the allegations of value which were ultimate facts subject to proof at the hearing on the merits, but *the sufficiency of the facts, if proved, to establish a defense, and the right to make such a defense.* Since the objections were not heard, the evidence to prove the allegations in question was not before the court and the acceptability of the allegations was not subject to determination.

The majority opinion ignored and did not consider the defenses presented by the amended objections that the Railroad had been denied due process and the equal protection of the Revenue Laws of Illinois in the taxation of its property, and that the action of the County Court in striking the amended objections and in awarding judgment to the Collector, had deprived it of its sole efficient

remedy to avoid the discriminatory and excessive taxation objected to, and that thereby the Railroad had been denied due process of law. The objections were stricken by the County Court and the action of striking was affirmed by the Illinois Supreme Court. The remedy provided by the Act for the distressed taxpayer was, therefore, effectively refused upon federal, as well as the state grounds referred to in this opinion.

QUESTIONS PRESENTED BY THE PETITION FOR REHEARING.

By timely petition for rehearing the Railroad pointed out that it had not relied upon "bare allegations" of value and that all essential ultimate facts to be compared had been affirmatively stated, that counsel were unable to find in the Collector's motion to strike any assigned reason which supported the criticism upon which the court's opinion was based, and that, under rules of Illinois practice, the question not having been raised, had been waived (Petition for Rehearing, Point I, pages 4-10, R., 17).

It was further pointed out in the petition for rehearing that the remedy of tax objection was defined by statute, to be of a summary nature "without pleadings," and that the court had held it sufficient if, upon reading an objection, court and counsel could readily understand the questions presented for determination, and had repeatedly declined to consider technical criticism of tax objections which met this test (Petition for Rehearing, Point II, pages 10-17, R., 17). It was also pointed out that the court had previously defined both the form and substance of an identical defense of constructive fraud to be those contained in the subject objections.[7]

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[7] People v. K & H Bridge Co., 287 Ill. 246, 247-8, 122 N. E. 467, referred to in dissenting opinion of the Chief Justice.

The court's attention was also called to the many Illinois and Federal decisions holding similar disparity in the assessment of property for purposes of taxation to be discriminatory, and to support a similar remedy. (Petition for Rehearing, Point III, pages 17-22, R., 17.)

The petition also called the court's attention to its failure to consider the defenses based upon the due process and equal protection clauses presented by Point V of Appellant's brief and argument, in which it was contended that:

> "The order and judgment complained of erroneously confirmed the usurpation of legislative power and violation of the Act by those charged with its administration and denied the Railroad the sole efficient remedy for the protection of its rights. The Railroad was, thereby, denied due process of law and the equal protection of the laws, and was subjected to taxation lacking both in statutory and constitutional uniformity in violation of * * * the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Federal Constitution." (Petition for Rehearing, Point IV, pages 22-23, R., 17.)

FEDERAL QUESTIONS ORIGINATING IN THE DECISION OF THE ILLINOIS. SUPREME COURT.

Lastly, in its petition for rehearing, the Railroad further contended that:

> "Since the objections fairly state tax discrimination injurious to the railroad resulting from inequality and discrimination in the administration of the Act, and constituting constructive fraud under the decisions of this court, for which the remedy of tax objection is applicable as a matter of law, **the opinion of the court**

amounts to a capricious withholding or refusal of this statutory remedy to the objector in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States * * * the court has misapprehended the factual and pleading aspects of the remedy of tax objection, and has attached thereto and here applied requirements without the scope of Secs. 194 and 235 of the 1939 Revenue Act, as amended, which defeat the purpose and intention of the statute, and which requirements are not uniformly applied by this court in other tax objection cases. We respectfully submit, that, by this decision, the rights of the railroad to equal protection under the Act and to due process as provided by the Act, have been even further invaded.

"This invasion is predicated upon a technical pleading point not clearly presented in the lower court and not clearly defined in this court, although this court has held a technicality should not be considered in a case of this kind, at a time when raising it is unavoidably prejudicial to the objector.

"By thus circumscribing the remedy and withholding it from the objector, so that the plain provisions of the statute are defeated, the court denies the railroad its only efficient remedy for the relief sought, imposes a different standard of pleading to the subject tax objections than is provided by law and is acceptable in other cases, and deprives the railroad of both equal protection and due process under the Fourteenth Amendment" (Petition for Rehearing, Point V, pages 23-24, R., 17). (Emphasis supplied.)

MOTION EX MERO MOTU.

With its petition for rehearing, the Railroad filed a motion that the Supreme Court consider the exercise of its power *ex mero motu* to order an amendment of the subject objections meeting its criticism. The court declined to allow the motion.

DISSENT.

The dissenting opinion of Chief Justice Hershey of the court, filed on the day the court ruled upon the petition for rehearing, confirms the views of the Railroad expressed in the petition for rehearing (Appendix B).

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

1. The Case Presents Questions of Importance to Every Taxpayer and Taxing Authority in the State of Illinois.

Involved is (1) the loss of an estimated $21,033,219,016 in ad valorem tax values in the State of Illinois, and (2) a shifting of approximately $14,197,769 in ad valorem taxes from locally assessed to state assessed property.

Government below state level in Illinois is supported almost entirely by ad valorem taxes. It is estimated that for 1951, tax bills totaling approximately $524,000,000 were presented Illinois property owners.

The assessed value of the property subjected to a lien for the payment of such bills, so taxed, divided according to whether its 1951 assessment was at local or state level, was as follows:[8]

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[8] Ninth Annual Report of the Department of Revenue, State of Illinois.

Locally assessed property	$23,359,391,884
State assessed: railroad property.....	1,084,964,000
: Capital Stock Cos.....	381,847,950

According to figures released by the Department of Revenue of the State of Illinois for 1951, the $23,359,391,884 assessed value of locally assessed property shown above represented only 52.62%[9] of the full, fair cash value of such property. Thus, if all such locally assessed property had been assessed at its full, fair cash value, as required by law, then the total assessment of such property would have been $44,392,610,900. The failure to so assess such property has caused a loss in tax values of approximately $21,033,219,016.[10]

The failure of public officials charged with the duty to assess and equalize local property valuations at the 100% level of full, fair cash value at which railroads and Capital Stock companies in Illinois were admittedly assessed, has caused a demonstrable shift in the tax burden from locally assessed to state assessed property.

On the basis of the above figures it is estimated that if locally assessed property had been assessed at its full, fair cash value of $44,392,610,900, then the effective tax rates against **all** taxable property would have been reduced with the following (estimated) results:

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[9] Report of the Illinois School Problems Committee No. 3, to the Governor of Illinois and the 69th General Assembly (Separate Appendix E, pages 38-41).

[10] This figure is a figure nearly equal to the all-time high of $21,374,825,121, constituting the total assessed value of all real property in New York City. The comparable loss alleged by the Railroad to have occurred in Madison County in 1951 was $330,000,000 (Abst., 9).

1. the tax bills of the 74 railroad companies[11] in the state with 23,135.7 miles of track would have been reduced from.....$22,899,250
to..... 12,396,582

a reduction of $10,502,668

2. the tax bills of 15,414 Capital Stock companies would have been reduced from..$ 8,059,283
to..... 4,362,918

a reduction of .....$ 3,696,365

The approximate $14,200,000 reduction of the taxes on state assessed property would be added to the taxes to be borne by locally assessed property and thus represent the extent to which the tax burden has been unlawfully shifted from local to state assessed property.

Here the objecting taxpayer seeks to maintain its remedial right, conferred by statute, to avoid the excessive, discriminatory and unjust taxes levied upon its property by reason of the acknowledged inequality in assessments.

2. The Illinois Supreme Court Has Decided Federal Questions of Substance in a Way Not in Accord With the Applicable Decisions of this Court.

A.

The Illinois courts effectively denied the independent federal defenses of denial of due process and equal protection, which were well pleaded, without having considered the merits of such defenses.

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[11] The number of railroad companies, their mileage in Illinois and number of capital stock companies assessed by the Department of Revenue was taken from the Ninth Annual Report of the Department of Revenue, State of Illinois.

Without here repeating the facts stated in the objections, as amended (Abst. 3-22, 28-40), reference may be made to the summary contained in the court's opinion (Separate Appendix A) and statement herein at pages 7 and 8.

There were presented almost classical examples of a denial of due process and of unequal protection. If proved, the facts stated would have established that the Railroad had been unlawfully taxed through gross discrimination in the evaluation of locally assessed property and had been denied the rights of due process and equal protection of the Illinois Act in violation of the Fourteenth Amendment.[12] In considering the motion to strike, and for all purposes upon questions arising from the allowance of the motion, these facts were admitted by the motion.[12a] (**People v. Keokuk and Hamilton Bridge Co.**, 287 Ill. 246, 248-250, 122 N. E. 467; **Aldrich v. Harding**, 340 Ill. 354, 359, 172 N. E. 772; **Tuttle v. Bell**, 377 Ill. 510, 512, 37 N. E. [2d] 180.)

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[12] Discrimination in the valuation of property of an objecting taxpayer upon which taxes objected to are based, arising out of intentional undervaluation of other taxable property, as alleged in the subject objections, is a denial of equal protection of the laws in violation of the Fourteenth Amendment. *Hillsborough Township v. Cromwell*, 326 U. S. 620, 623-624; *Concordia Fire Insurance Co. v. Illinois*, 292 U. S. 535, 540—a ratio 100 to 60; *Cumberland Coal Co. v. Board of Revision*, 284 U. S. 23, 28-29—a ratio 100 to 50; *Green v. Louisville and I. R. Co.*, 244 U. S. 499, 508, where there occurred an assessment of .75 of full valuation of complaining taxpayers' property compared with a .52 assessment for other taxpayers—a ratio 100 to 70.6; *Sioux City Bridge Co. v. Dakota*, 260 U. S. 441, 446—a ratio 100 to 55; *Raymond v. Chicago Union Traction Co.*, 207 U. S. 20, 35-36, holding that the Fourteenth Amendment applies equally to the executive and judicial divisions of state government as to the legislature—a ratio 100 to 65. And see *Chicago Railway Co. et al.* and *People v. Sullivan et al.*, Seventh C. C. A. (1949), 175 F. 2d 282, 286-288.

[12a] It is to be noted that the amended objections did not rely upon mere undervaluation of locally assessed property. Knowledge and intention on the part of the local assessors and Board of Review to assess and certify such property at a debased value of 10.2 percent of full value, and knowledge and intention of the Department to certify a multiplier to equalize such debased assessments at not

Failure of the Illinois Supreme Court to refer to the federal defenses in its opinion did not have the effect of avoiding their consideration by this court. The order and judgment of the County Court were founded upon the order allowing the Collector's motion to strike the objections, as amended and it was necessary for the court to pass upon the sufficiency of the facts alleged to support such defenses in its consideration and ruling upon the motion to strike and in entering judgment. The judgment of the Supreme Court of Illinois affirmed the judgment of the lower court.

It has been invariably held to be sufficient if the decision of the state court necessarily denied the asserted federal rights in the judgment rendered. (**St. Louis, I. M. & S. R. Co. v. Starbird,** 243 U. S. 592, 601; **Chicago, B. & Q. R. Co. v. Chicago,** 166 U. S. 226, 231). Federal questions fairly presented by the record will be reviewed and the failure of the state court to pass upon an asserted federal defense is not conclusive, even though its judgment rests upon an independent, separate ground of local or general law, and, if the necessary effect of the judgment of the state court is to deny the defense which, if considered and established, would require judgment different from that of the state court, this court will take jurisdiction and decide the federal questions presented. (**Chicago, B. & Q. R. Co. v. Illinois ex rel. Grimwood,** 200 U. S. 561, 580-581; **West Chicago Street R. Co. v. Illinois ex rel. Chicago,** 201 U. S. 506, 520.)

In determining whether federal defenses were adequately presented and by-passed, this court is not concluded by

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to exceed 60 percent of full cash value, are expressly alleged. The overvaluations are shown to have been arrived at systematically, and the practices described have been officially acknowledged to be representative of assessment and equalization procedure in Illinois. (*Great Northern R. Co. v. Weeks,* 297 U. S. 135, 139; *Charleston Federal Savings and Loan Association v. Alderson,* 324 U. S. 182, 190-191, Separate Appendix E.)

the decision of the state court. (**Ellis v. Dixon,** 349 U. S. 458, 463.) Federal rights can not be defeated by the forms of local practice. (**Brown v. Western Railway of Alabama,** 338 U. S. 294, 296; **American Railway Express Co. v. Levee,** 263 U. S. 19, 21; **Davis v. Wechsler,** 263 U. S. 22, 24.) Whether a pleading sets up a sufficient defense grounded upon the Constitution of the United States is necessarily a question of federal law, and this court must determine for itself the sufficiency of the pleadings presenting such defense. (**First National Bank v. Anderson,** 269 U. S. 341, 346; **Mitchell v. Clark,** 110 U. S. 633, 645; **Boyd v. Nebraska,** 143 U. S. 135, 180; **Covington & L. Turnp. Co. v. Sandford,** 164 U. S. 578, 595.) While questions of pleading are normally local questions, this court must construe the amended objections to determine whether the federal questions here relied upon were presented. (**Carter v. Texas,** 177 U. S. 442, 447; **St. Louis S. W. R. Co. v. Arkansas,** 217 U. S. 136, 149.) Whether the rights and questions were sufficiently pleaded or brought to the attention of the state courts, and whether the determination of such questions are necessary for a determination of the case are federal questions to be determined upon the record. (**Grannis v. Ordean,** 234 U. S. 385, 394; **Honeyman v. Hanan,** 300 U. S. 14, 18.)

It is respectfully submitted that the amended objections of the Railroad presented its federal defenses in the County Court and in the Supreme Court in a form clearly sufficient to require their consideration upon the merits and that the striking of such objections denied the Railroad its only efficient remedy and due process of law as the Illinois statute had in such case provided, and that this court should accept jurisdiction for the purpose of requiring the reinstatement of the objections so that the same may be heard upon the merits of the asserted federal defenses.

B.

The Railroad was deprived of due process and equal protection by the judgments of the Illinois courts after their capricious and arbitrary rejection of all defenses.

The sole remedy provided by law in Illinois for the escape of a taxpayer from unlawful or unjust taxation is that of tax objection (Secs. 194, 235 of the 1939 Revenue Act; 1951 Ill. R. S., Ch. 120, 675, 716). **Section 194** provides that any taxpayer who has paid 75 percent of the tax complained of under protest and appears at the next application for judgment for such taxes may object thereto, and "where the taxpayer appears and files objection the court shall hear and determine the matter according to the right of the case and enter judgment for any part of the taxes, or order a refund of any part of the taxes so paid under protest.[13] **Section 235** provides, in part, that "the court shall hear and determine the matter (of tax objection) in a **summary manner, without pleadings and shall pronounce judgment as the right of the case may be.** * * * If any party objecting to any tax paid under protest **is entitled to a refund of the amount, or any part thereof, so paid under protest, the court shall enter judgment accordingly.**" (Emphasis ours.) There is no limit or condition to the defense which may be offered by a taxpayer in the form of a tax objection to the Collector's application for judgment for an unlawful tax which has been paid under protest.[14]

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[13] No questions arise as to procedure followed upon the subject objections in perfecting the remedy in conformity with the statute.

[14] The very nature of a tax objection, pursued solely for the purpose of recovering protested taxes theretofore paid, negatives the use of this remedy for the purpose of securing a reassessment of property, which is inhibited by Section 1 of Article IX of the Illinois Constitution. There is literally nothing to support the language of the Supreme Court's opinion in this case, that it might consider only a defense of fraud or constructive fraud, if, in fact, other valid defenses were presented by the objections. However, it should be

The remedy of tax objection is an informal, summary proceeding for which pleadings are not required and which is decided at the hearing of the objection, upon the evidence then before the court as the right of the case may be. Illinois cases have uniformly held that a tax objection is not subject to technical criticism, and that it is sufficient if the objection contains a clear and concise statement, couched in simple language, of sufficient ultimate facts to show the point relied upon. (**People v. Ridge Country Club**, 399 Ill. 46, 57, 76 N. E. 2d 456; **People v. K. & S. W. R. R. Co.**, 237 Ill. 362, 367, 93 N. E. 773; **People v. C. B. & Q. R. R. Co.**, 281 Ill. 500, 503, 96 N. E. 890; **People ex rel. Stuckart v. Shortall**, 287 Ill. 150, 151, 122 N. E. 60.) In a case directly in point upon a similar defense the Illinois Supreme Court held a brief statement of the ultimate facts sufficed. (**People v. K. & H. Bridge Co.**, 287 Ill. 246, 248-250, 122 N. E. 467.) A defense of constructive fraud, as well as the federal defenses was sufficiently alleged under the Illinois statute.

In **People ex rel. v. Turk**, 391 Ill. 424, 63 N. E. 2d 513, the Illinois Supreme Court said:

> "In the assessment of property, **constructive fraud is established in various ways.** In **People v. Stewart,** 315 Ill. 25, we held where there is an entire absence of proof to sustain the assessment, and the evidence[14a] in connection with other circumstances shows an overvaluation which is excessive, the conclusion is required that it did not arise from error in the exercise

noted that there is little difference in the ultimate facts supporting a defense of denial of the federal rights to due process and equal protection and the local defense of constructive fraud (*Charleston Federal Savings and Loan Association v. Alderson*, 324 U. S. 182, 190-191). In this case the same ultimate facts supported all defenses. Proof of the facts might vary because presumptions available in one might not be relied upon in another defense.

[14a] The evidence proving the alleged facts determined whether the defense was established at the hearing.

of honest judgment, but was arbitrarily and intentionally made. In **People ex rel. Wangelin v. St. Louis Bridge Co.**, 357 Ill. 245, it is held that in case of over-valuation it is not necessary that intentional fraud be shown, but that where the evidence clearly establishes the assessment was made either in ignorance of the value of the property, or on a judgment not based upon readily obtainable facts, or that **the property was designedly excessively valued**, such conduct on the part of the taxing authorities amounts to a constructive fraud. * * * As late as the case of **People v. Wilson**, 367 Ill. 494, the rule is laid down that where the circumstances show the property to have been grossly over-valued, and the assessed valuation is reached under circumstances showing either lack of knowledge of values upon the part of the assessor making the assessment, or a **deliberate and knowing fixing of values contrary to the known value, fraud in law will be inferred**, and the court will protect the rights of the taxpayers." (Emphasis ours.) (pp. 427-428.)

And in **The People ex rel. Wangelin v. Wiggins Ferry Co.**, 357 Ill. 173, 191 N. E. 296, it was said at page 179:

> "* * * if the facts[14a] show that the taxing authorities have assessed the property for taxation purposes at a valuation grossly in excess of **its market value**, and that such assessment **was deliberately and willfully made, such conduct amounts to a constructive fraud, and the courts will intervene to protect the taxpayer against the wrong undertaken to be perpetrated against him.**" (Emphasis ours.)

The amended objections alleged gross, intentional under-assessment of locally assessed property. The alleged gross

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[14a] The evidence proving the alleged facts determined whether the defense was established at the hearing.

discrimination in the final assessment was founded upon an alleged ratio of 100% of full value for the railroad's property to not to exceed 60% of full value for locally assessed property, a differential of not less than 40%.[15]

The criticism of the objections upon which the opinion of the Illinois Supreme Court, in considering the defense of constructive fraud, was founded was not raised by the motion to strike, was not considered in the trial court, was not presented by any brief or argument in the Supreme Court and was waived under Illinois rules of practice and procedure and, if and when raised, was curable by amendment. (**People v. C. B. & Q. R. R. Co.**, 282 Ill. 206, 217, 118 N. E. 336; **C. M. & N. R. R. Co. v. People**, 207 Ill. 312, 314-5, 69 N. E. 854; **People v. A. T. & S. F. R. Co.**, 389 Ill. 204, 207, 58 N. E. 2d 916; Rule 39 of the Illinois Supreme Court, Appendix D.)

It must be conceded that the action of the Illinois Supreme Court in sustaining the trial court, and the final judgment of the trial court after striking the objections,

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[15] The court found gross discrimination and resulting constructive fraud in each of the following cases: The ratio of assessment and percent of discrimination or overvaluation upon which the wilful violation was presumed are indicated after each citation. *People v. C. M. & St. P. R. R. Co.*, 381 Ill. 58, 44 N. E. 2d 566—ratio of 50 to 35, 30%; *People v. K & H Bridge Co.*, 287 Ill. 246, 250, 122 N. E. 467—simply 40% overassessment; *People v. Ill. Central R. R. Co.*, 355 Ill. 605, 190 N. E. 82—ratio of 60 to 37, 37.5%; *People v. Stewart*, 315 Ill. 25, 29-30, 145 N. E. 600—ratio 100 to 60, 40%; *People v. C. B. & Q. R. R. Co.*, 300 Ill. 399, 133 N. E. 467—ratio 100 to 50, 50%; *People v. Union Station Co.*, 383 Ill. 153, 48 N. E. 2d 524—ratio 85½ to 40, 46.7%; *People v. Commonwealth Edison Co.*, 376 Ill. 70, 73, 77, 32 N. E. 2d 902—ratio of (80% book value × 37%) to (60% book value × 37%), a discrimination of 23.9%; *Peoples Gas Light and Coke Co. v. Stuckart*, 286 Ill. 164, 121 N. E. 629—ratio 100 to 50, personal property, 100 to 60, real estate, 40% to 50%; *C. & A. R. R. Co. v. Livingston County*, 68 Ill. 458, 461—ratio 2/3 to 1/3, 50%; *C. C. C. & St. L. Ry. Co. v. People*, 223 Ill. 17, 20, 79 N. E. 17—ratio 100 to 69, 30.1%. And in *Bureau County v. C. B. & Q. R. Co.*, 44 Ill. 229, a leading case the ratio held discriminatory and fraudulent was 100 to 66-2/3.

which clearly and fully presented independent defenses of constructive fraud and of denial of due process and equal protection, and which complied with and met every test provided by statute and by previous applicable Illinois and federal decisions, were arbitrary and capricious judicial acts, not founded upon law or the right of the case, and effectively served to deprive the Railroad of its only efficient remedy for the presentation of these defenses.

Since the rulings in question served to deprive the Railroad of a hearing of its objections as to all of its defenses, and the opportunity to be heard and present evidence is the essence of due process, it follows that the striking of the objections in the trial court and the entry of judgment upon the Collector's application without a hearing of the defenses presented by the objections, and the affirmance of the trial court judgment by the Illinois Supreme Court were each a denial of the due process and equal protection guaranteed by the Fourteenth Amendment.[16]

The grounds relied upon by the Illinois Supreme Court in refusing to accept the facts pleaded for the defense of constructive fraud were without foundation or substance in the light of the provisions of the statute establishing the remedy, and prior cases construing it and defining the defense. The final decision of the state court must be

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[16] The fundamental requisite of due process of law is the opportunity to be heard (*Grannis v. Ordean*, 234 U. S. 385, 394; *Louisville & N. R. Co. v. Schmidt*, 177 U. S. 230, 236; *Simon v. Craft*, 182 U. S. 427, 436). The due process clause of the Fourteenth Amendment assures a hearing before the court or other tribunal empowered to perform the judicial function involved. That includes the right to introduce evidence and to have judicial findings based upon it (*Baltimore & Ohio R. Co. v. United States*, 298 U. S. 349, 368-369). The striking of a pleading presenting a lawful defense and the rendering of final judgment without a hearing upon the evidence in the then undefended proceeding is a denial of due process (*Hovey v. Elliott*, 167 U. S. 407, 413-418; *Windsor v. McVeigh*, 93 U. S. 274, 278; *McVeigh v. United States*, 78 U. S. 259, 265-267).

regarded as a device adopted to prevent the consideration of this defense and the asserted federal defenses upon a hearing. This court has undoubted jurisdiction to review this decision as to the sufficiency of the objections to present the defenses of due process and equal protection and also in respect to the denial of these federal rights by the trial court in striking the objections and entering judgment, and by the Supreme Court in affirming that judgment (**Enterprise Irrigation District v. Farmers Mutual Canal Co.**, 243 U. S. 157, 164). Avoidance by the Illinois Courts of reference to the federal questions presented by the amended objections and the striking of the objections was as much against the federal rights claimed as though they had been directly refused (**Consolidated Coal Co. v. Illinois,** 185 U. S. 203, 206-7; **Chicago L. Ins. Co. v. Needles**, 113 U. S. 574, 579).

In affirming the trial court upon a technical pleading point, theretofore waived, and circumscribing the remedy of tax objection and withholding it from the Railroad, so that the plain intent of the statute providing the remedy was defeated, the Court imposed a different standard of pleading than was provided by Illinois law and was accepted in other similar cases, and deprived the Railroad of a hearing and an opportunity to present evidence, and denied it both due process and equal protection.

IN CONCLUSION.

It is respectfully submitted that this is a case of substantial importance and questions decided by the Illinois Courts are not compatible with prior decisions of this Court and that justice requires that this petition be allowed; and the petitioner, therefore, invokes the jurisdiction of this court and prays that a writ of certiorari issue

to review the decision of the Supreme Court of Illinois in this case, and further prays that, upon such review, the judgment of said court be reversed and the cause remanded.

Respectfully submitted,

J. N. OGDEN,
104 St. Francis Street,
Mobile, Alabama,
LOUIS F. GILLESPIE,
HUGH J. DOBBS,
508 Reisch Building,
Springfield, Illinois,
Attorneys for Petitioner.

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HAROLD B. WILLEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 166

GULF, MOBILE AND OHIO RAILROAD COMPANY,
Petitioner,

vs.

PEOPLE ex rel. JAMES T. CALLAHAN, County Collector of Madison County, Illinois,
Respondent.

SEPARATE APPENDIX TO PETITION FOR A WRIT OF CERTIORARI CONTAINING RELEVANT OPINIONS, REPORTS AND ORDERS.

J. N. OGDEN,
104 St. Francis Street,
Mobile, Alabama,
LOUIS F. GILLESPIE,
HUGH J. DOBBS,
508 Reisch Building,
Springfield, Illinois,
Attorneys for Petitioner.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 1-4477.

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